S.B. CIVIL MISC. APPEAL NO.1992/2006.
(Sukhjeet Kaur & Anr. Vs. Kewal Krishan & Anr.)

Date of Order :: 8th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.L. Jain, for the appellants.

By way of this appeal, the claimants seek enhancement over the amount of Rs.2,68,800/- awarded by the Tribunal towards compensation.

For quantification of compensation to be awarded to the wife, son and mother of the vehicular accident victim Jaswant Singh, about 24 years in age, the Tribunal has noticed the assertion of the claimants about earnings of the deceased at Rs.5,000/- per month from agriculture and dairy farming, has noticed that the deceased had about 13 bighas of irrigated agriculture land in his name and his two brothers were having one murabba land each; that the three brothers were jointly cultivating their about two and half murabbas of land and were sharing the income by selling the produce in the name of brother Angrej Singh; that in the years 1999 and 2000, they sold the agriculture produce worth Rs.7,50,000/-, i.e. at average about Rs. 3,75,000/- per annum. With reference to

20% land available with the deceased Jaswant Singh, the Tribunal has estimated his receipts from such sell of produce at Rs.75,000/- per annum and accounting for the expenditure on seeds, manure, electricity, labour etc., has estimated his net income at Rs.35,000/- per annum. The Tribunal has also noticed the submissions of the wife of deceased that she was now getting the land cultivated through others and has, therefore, taken into consideration the loss of claimants with reference to the labour and supervision of the victim Jaswant Singh at Rs.2,100/- per month, i.e. Rs.25,200/- per annum. The Tribunal has rejected the assertion of claimants about income of the deceased from dairy farming for want of any cogent evidence in that relation. With reference to the income estimated at Rs.2,100/- per month and after deducting one-third therefrom and with application of multiplier of 16, the Tribunal has assessed pecuniary loss at Rs.2,68,800/-; and while allowing Rs.20,000/- towards non-pecuniary loss and Rs.2,000/- towards funeral expenses, the Tribunal has allowed total compensation to the claimants in the sum of Rs.2,90,800/- and has allowed interest @ 9% per annum from date of filing of the claim application.

It has been strenuously contended by learned counsel for the appellants seeking enhancement that the Tribunal has

been in error: (i) in not providing for adequate loss towards agriculture income ; (ii) in not providing anything towards the loss of dairy income; and (iii) in applying lesser multiplier of 16 though with reference to the Second Schedule to the Motor Vehicles Act, multiplier of 17 ought to have been applied when the deceased was 24 years in age.

So far the loss towards agricultural income is concerned, the Tribunal has proceeded to assess the loss on relevant considerations; and yet, ultimately has assessed the same rather on the higher side and in favour of the claimants. On the evidence produced by the claimants as noticed above, the share of victim Jaswant Singh in sale of agriculture produce could not have been taken more than Rs.75,000/- per annum and obviously, the necessary expenditures were required to be provided against. The Tribunal cannot be said to have erred in taking net income of the deceased at Rs.35,000/- per annum that comes to nearly Rs.3,000/- per month. By its very nature, a part of agricultural income retains itself to the claimants; and as admitted by AW-1 Sukhjeet Kaur, wife of the deceased, the land is being cultivated through others. The Tribunal has yet provided for loss at about Rs.2,100/- per month with reference to the labour and supervision of the victim and hence, has taken the multiplicand

at Rs.25,200/- that can only be said to be higher than adequate.

So far dairy income is concerned, the Tribunal has noticed that the claimants have not produced any evidence about number of cattle and about the income and expenditure in that relation. The Tribunal cannot be said to have erred in rejecting such component of income for want of relevant evidence. Even if it be assumed for the sake of arguments that there was some income earned by the deceased from dairy farming, again for its very nature, a substantial part of such income retains itself to the claimants.

With reference to Second Schedule to the Motor Vehicles Act, the Tribunal could have applied multiplier of 17 for assessment of pecuniary loss but viewed in the context of the facts that a substantial part of the income of the deceased is nevertheless available to the claimants and that assessment of multiplicand at Rs.25,200/- has itself been on the higher side, choice of multiplier of 16 cannot be said to be inadequate. Moreover, the Tribunal has proceeded to award interest at the rate of 9% per annum and choice of such rate of interest in the award made in the month of September 2006 is also on the higher side.

Therefore, in the ultimate analysis, the award of compensation as made by the Tribunal in favour of the claimants cannot be said to be falling short of just compensation admissible in this case and there appears no scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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